IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 1337 of 2001
(Old No. 354 of 2000)

Dan Singh S/o Guman Singh
R/o Village Mola, Patwari Circle Nagrasu,
Tehsil and District Rudraprayag. ..... Appellant

Versus

1. Gopal Singh S/o Shyam Singh,
   R/o Village Kathood,
   Patwari Circle Bairagana,
   Tehsil & District Chamoli,
   Owner of Jeep No. UP-7-E-4029.
2. Oriental Insurance Company Ltd.,
   through Divisional Manager, Jwalapur,
   Haridwar. ..... Respondents

Mr. Dinesh Chauhan, advocate on behalf of Mr. N.S. Negi, Advocate for the appellant.
None for respondent No. 1.
Mr. Pankaj Purohit, Advocate for respondent No.2.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

RAJEEV GUPTA, C.J. (Oral)

This is claimant's appeal filed under Section 173 of the Motor vehicles Act for enhancement of the compensation awarded by Motor Accident Claims Tribunal, Chamoli vide Award dated 15.02.2000 passed in M.A.C.T. Case No. 10 of 1999.

2. Appellant / claimant Dan Singh claimed compensation of Rs. 5,00,000/- for the injuries sustained by him in the motor accident on 30.04.1998 when the driver of the Jeep bearing registration No. UP-7-E-4029, driving the same rashly and negligently, hit the claimant resulting in serious injuries and the fractures to him. The claimant further pleaded that the injuries and the fractures suffered by him in the accident have rendered him unfit to pursue his occupation of Contractor resulting in financial loss to him.

3. The owner and the insurer of the offending vehicle Jeep contested the claim. The owner, while admitting the fact of the accident, denied his liability to pay compensation on the plea that the accident took place on account of sudden mechanical defect in the vehicle. The insurer, too, denied its liability to pay compensation to the claimant on the plea that the Jeep was being plied in breach of the policy conditions and the driver of the Jeep was not holding a valid driving license.

4. The Tribunal, on the evidence led by the parties, held that claimant Dan Singh sustained injuries in the motor accident on 30.04.1998; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Jeep; and the insurer of the Jeep was liable to pay compensation to the claimant.

5. Considering the evidence led by the claimant about the nature of the injuries sustained by him in the accident and the amount spent on treatment, the Tribunal awarded a sum of Rs. 5,000/- towards Pain & Suffering; Rs. 38,565/- for Medical Expenses; Rs. 15,000/- for Conveyance Charges spent during treatment; and Rs. 5,000/- for Loss of Income. Thus, the total sum of Rs. 63,565/- was assessed as compensation payable to the claimant. There appears to be an apparent mistake in the calculation of the amount in the Award. The Tribunal has mentioned Rs. 58,565/- as the total of the above-mentioned sums awarded by the Tribunal, whereas, in fact, the total comes to Rs. 63,565/-. The Tribunal further directed payment of interest at the rate of 10% per annum from the date of the Award on the failure of the insurer to make payment within a period of 1½ months from the date of the Award.

6. Mr. Dinesh Chauhan, the learned counsel for the appellant vehemently argued that the Tribunal has erred in awarding low

compensation of Rs. 63,565/- (wrongly mentioned as Rs. 58,565/- in the Award) though the appellant sustained fractures of his knee and pelvic bone in the accident.

7. Mr. Pankaj Purohit, the learned counsel for the insurer of the offending vehicle Jeep, on the other hand, supported the Award and submitted that the compensation awarded by the Tribunal is just and proper and therefore, does not call for any enhancement in this appeal. The learned counsel, however, conceded to the calculation mistake in the total of the sums awarded by the Tribunal under different heads and that the correct total should be Rs. 63,565/- and not Rs. 58,565/- as mentioned in the Award.

8. The findings recorded by the Tribunal that claimant Dan Singh sustained injuries in the motor accident on 30.04.1998; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Jeep; and the insurer of the Jeep is liable to pay compensation to the claimant, have, now, attained finality, as the respondents have not filed any appeal against the Award.

9. Claimant Dan Singh sustained injuries in the accident resulting in fractures of his right knee and pelvic bone is established from the record. It is also in the evidence that on account of the injuries and the fractures sustained by him in the accident, the claimant remained hospitalised for a period of more than one month. The claimant, who was a Government Contractor, suffered loss of income during the period of hospitalisation and thereafter also till he resumed his normal work. During the period of hospitalisation and for few days thereafter, the claimant must have suffered physical pain and mental agony on account of the injuries and the fractures sustained by him in the accident. True, the claimant could not establish that the injuries and the fractures suffered by him in the accident resulted in any permanent disability. Be that as it may, the compensation of

Rs. 63,565/- (wrongly mentioned as Rs. 58,565/- in the Award) assessed by the Tribunal, when examined in the context of the above-mentioned broad features of the case, is certainly on the lower side and deserves to be enhanced suitably.

10. In our considered view, a lumpsum of Rs. 80,000/- would be just and proper compensation in the case and would meet the ends of justice.

11. For the foregoing reasons, the appeal filed by appellant Dan Singh under Section 173 of the Motor Vehicles Act for enhancement of the compensation awarded by the Tribunal is allowed in part. The compensation of Rs. 63,565/- (wrongly mentioned as Rs. 58,565/- in the Award) is enhanced to Rs. 80,000/-. The enhanced amount of compensation shall carry interest at the rate of 6% per annum from the date of the application.

12. No order as to costs.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C.J.)**
11.08.2006 11.08.2006

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